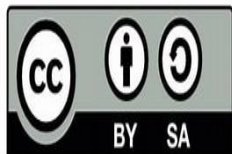


Legal Position Of A Deed Made By A Substitute Notary Who Does Not Meet The Requirements For Appointment

Dewi Puspitasari
Surabaya University
dewiembul@yahoo.com

Abstract: This research was conducted to analyze the validity of deeds made by or before a Substitute Notary who did not meet the requirements for his/her appointment and to find out what authority and responsibility the Substitute Notary must accept. In this case, what has been done is not in accordance with Article 33 paragraph (1) UUNJ, as explained that the requirements to become a Substitute Notary and temporary Notary are Indonesian citizens who have a law degree and have worked as an employee of a Notary's office for at least 2 (two) consecutive years. In reality, when a Substitute Notary in his/her appointment does not comply with the applicable regulations, then the deed made by the Notary becomes a problem regarding the validity of the deed made. This research uses the Normative Juridical method (legal research) with a statutory approach and a conceptual approach. The results of this scientific research are that firstly, the deed made by the Substitute Notary is valid, but the deed is degraded to a private deed, because the Substitute Notary does not have the authority as stated in Article 15 and the Substitute Notary does not meet the requirements for appointment in Article 33 paragraph (1) of the Notary Law, and does not meet the requirements stipulated in Article 1868 of the Civil Code, so that according to Article 1869 of the Civil Code the deed becomes a private deed. Secondly, the Substitute Notary cannot be fully blamed, because the Substitute Notary is the appointed Substitute Notary. The Substitute Notary is not authorized to make deeds, and the Substitute Notary is independently responsible for the deeds he/she makes, where the Substitute Notary can be sued in civil court for damages, if the parties demand damages.

Keywords: Position; Notarial Deed; Substitute Notary.



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I. INTRODUCTION

The Notary Public has a fairly old history, Notaries have existed in Indonesia since August 27, 1620. Melchio Kerchen served as the first Notary in Indonesia.¹ At that time, Notaries did not have the freedom they do now because they were employees of *Oost Indie*, in contrast to the current situation where Notaries are independent public officials. The realization of legal certainty requires the availability of good legal instruments to support conducive business activities so that the needs of each party can be met properly, Notary as a position that has characteristics.² In order to carry out this profession or help people who have legal problems, a notary who carries out this profession requires special skills as one of the prerequisites for becoming a professional in this profession.³

Notaries, which in English are called notary, while in Dutch they are called van Notaris, have a very important role in legal traffic, especially in the field of civil law, because Notaries are positioned as public officials, who have other authorities.⁴ Notary in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) that Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws. The position of Notary is held or its presence is required by legal regulations to assist and serve the community who need authentic written evidence regarding circumstances, events or legal acts.

Based on Article 1867 of the Civil Code (hereinafter referred to as the Civil Code), the term Authentic Deed is mentioned, and Article 1868 of the Civil Code provides elemental limitations regarding the intent of an authentic deed,⁵ namely that the deed must be made by or before a public official, the deed must be made in the form determined by law, the public official by or before whom the deed is made must have the authority to make the deed.

A deed made by or before a Notary can be evidence of a person's property status, rights, and obligations. Mistakes in a deed made by a Notary can result in the revocation of a person's rights or the burdening of a person with an obligation, therefore a Notary in carrying out his/her duties must comply with the various provisions stated in the UUJN.⁶ In relation to the duties and authorities of a Notary as a public official, every Notary can take or apply for a leave period after serving

¹ GHS Lumban Tobing, *Peraturan Jabatan Notaris* (Jakarta: Erlangga, 1999). p. 15.

² Habib Adjie, *Sanksi Perdata Dan Administrasi Terhadap Notaris Sebagai Pejabat Publik* (Bandung: Refika Aditama, 2009). p. 32.

³ Bayu Indra Permana, Mohammad Rafi Al Farizy, and Ferdiansyah Putra Manggala, "Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence," *Jurnal Justiciabelen* 7, no. 1 (2024): 66–75.

⁴ Salim HS, *Peraturan Jabatan Notaris* (Jakarta: Sinar Grafika, 2018). p.14.

⁵ Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris* (Bandung: Refika Aditama, 2011). p. 5.

⁶ Abdul Ghofur Anshori, *Lembaga Notaris Indonesia* (Yogyakarta: UII Press, 2009).p. 25.

his/her term of office for 2 (two) years as stipulated in Article 25 of the UUJN. Every Notary who will take his/her leave rights must follow and fulfill all procedures and requirements for leave in accordance with the rules contained in the UUJN. One of the obligations of a Notary when taking leave is that the Notary must appoint a Substitute Notary who will temporarily carry out his/her duties and authorities as a Notary.

A Substitute Notary is a person whose appointment procedures have been fulfilled and then appointed, inaugurated temporarily, with the aim of temporarily carrying out the position of a Notary who is on leave, sick or if for a certain period of time is unable to carry out his position as a public official.⁷ A substitute notary who will be appointed as a notary must fulfill the requirements in accordance with Article 33 paragraph (1) of the UUJN, namely: the requirements to be appointed as a substitute notary and temporary notary are Indonesian citizens who have a law degree and have worked as employees in a notary's office for at least 2 (two) consecutive years.

In reality, there was a case in the city of Yogyakarta where a notary died before his leave period ended. In this case, the legal status and legal responsibility of the substitute notary were questioned because this happened unexpectedly, and causing confusion for the Substitute Notary regarding the status the law and how to be responsible. Regarding the Substitute Notary that has occurred, what if there is an appointment of a Substitute Notary whose appointment is not in accordance with the applicable procedures in Article 33 UUJN, such as what happened in a city X, where a Substitute Notary was appointed not in accordance with the applicable requirements in Article 33 paragraph (1) UUJN, where the Notary who was appointed had not worked for 2 (two) years as an employee of a Notary's office.

In this case, what has been done is not in accordance with Article 33 paragraph (1) UUJN, as explained that the requirements to become a Substitute Notary and temporary Notary are Indonesian citizens who have a law degree and have worked as an employee of a Notary's office for at least 2 (two) consecutive years. In reality, when a Substitute Notary in his/her appointment does not comply with the applicable regulations, then the deed made by the Notary becomes a problem regarding the validity of the deed made.

II. METHODS

The research method used in this study is normative juridical. Normative juridical legal research is simply defined as research that asks whether the law is in a particular jurisdiction. In this case, researchers have the effort to collect and then analyze the law, with relevant legal norms. Research can be seen as purely normative or theoretical research, with a legislative approach and a conceptual approach. The

⁷ Andi Nurlaila Amalia Huduri, "Keabsahan Akta Otentik Yang Dibuat Oleh Notaris Pengganti Yang Para Pihaknya Adalah Keluarga Notaris Yang Digantikan," *Mimbar Keadilan* 13, no. 1 (2020): 32–43.

legislative approach is used to analyze all laws and regulations that are closely related to the topic discussed.

III. ANALYSIS AND DISCUSSION

Validity of Deeds Made by or Before a Substitute Notary Whose Appointment is Not in Accordance with Procedure

Discussion of Notaries taking mandatory leave appoint a Substitute Notary who will replace him during leave. The substitute notary has the same position, duties, authority, obligations and responsibilities as the notary being replaced. Based on Article 25 paragraph (3) of the UUJN, a Notary who will take leave is required to appoint a Replacement Notary, where in proposing the appointment of a Replacement Notary in accordance with Article 27 of the UUJN in writing, this must be done together with the application for leave. The Substitute Notary is fully responsible for the deeds he/she has made, even if the Notary is no longer in office.⁸

Regarding the Substitute Notary that has occurred, what if the appointment of a Substitute Notary is not in accordance with the applicable procedures in Article 33 paragraph (1) UUJN, such as what happened in a city X where an employee of a Notary's office had just started working and had not yet reached 2 (two) consecutive years of work, but the employee had already been appointed as a Substitute Notary, in this case the employee who was appointed as a Substitute Notary did not meet the requirements for appointment to become a Substitute Notary as regulated in Article 33 paragraph (1) UUJN, which explains that the requirements for appointment as a Substitute Notary and Temporary Notary Officer are Indonesian citizens who have a law degree and have worked as an employee of a Notary's office for at least 2 (two) consecutive years. In this case what was done was not in accordance with Article 33 paragraph (1) UUJN.

A Substitute Notary with only a background in law education is certainly not enough to be appointed as a Substitute Notary. To become a Substitute Notary, you are also required to have work experience in a Notary's office for at least 2 (two) years. In addition, the ability to work is also highly prioritized. A Notary must be a legal expert because in practice every day a Notary is faced with a thousand and one types of clients, each of whom brings different problems.⁹

The primary role of notaries and notary services institutions is to prepare legal documents for ratification and proof. However, with the enactment of Law Number 30 of 2004, and its amendment through Law Number 2 of 2014, notaries now have broader authority to meet the legal needs of the community. As public officials who are authorized by the state, notaries have certain obligations that must be fulfilled, as

⁸ Erwin Kunta Tejakusuma, Dwi Endah Nurhayati, and Samuel Saut Martua Samosir, "The Obligation of Notary as a Reporter in Efforts to Prevent and Eradicate Money Laundering Crime," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 28–44.

⁹ Pengurus Pusat Ikatan Notaris Indonesia, *Jati Diri Notaris Indonesia* (Jakarta: Gramedia Pustaka, 2000).p. 159.

well as prohibitions that must be obeyed. If these obligations and prohibitions are violated, notaries can be subject to sanctions in accordance with the provisions outlined in the UUJN.¹⁰

However, in reality, when a Substitute Notary in his/her appointment does not comply with the applicable regulations, then the status of the deed made by the Substitute Notary will cause irregularities regarding the validity of the deed made, as well as what responsibilities can be given to the Substitute Notary and what is the authority of the Substitute Notary in terms of making the deed. Substitute Notary in carrying out his/her duties must carry out all his/her obligations as regulated in Article 16 of his/her position. UUJN, one of his/her obligations is to act in a trustworthy, honest, fair, independent, impartial manner, and to safeguard the interests of the parties involved in making laws.¹¹

If a deed is made by a notary without his/her authority, it can be concluded that the deed in question is null and void by law, and all acts or legal actions stated in the deed must be deemed to have never occurred.¹²

Philipus M. Hadjon is of the opinion that the requirements for an authentic deed are, in the form determined by law, made by and before a public official. In addition, Irawan Soerodjo expressed the opinion that there are 3 (three) essential elements in order to fulfill the formal requirements of an authentic deed, namely: In the form determined by law, made by and before a public official, a deed made by or before a public official who is authorized to do so and at the place where the deed was made.¹³ Article 1868 of the Civil Code is a source for the authenticity of notarial deeds and is also the legal basis for the existence of notarial deeds, with conditions such as :¹⁴ *First* , the deed must be made by or before a public official. *Second* , the deed must be made in the form prescribed by law. *Third* , the public official by or before whom the deed is made must have the authority to make the deed.

The deed made by the Substitute Notary which was originally an authentic deed can be changed into a deed underhand, because the Substitute Notary who made the deed is an official who is not authorized to do so.¹⁵ This is because the Substitute Notary does not fulfill the procedural requirements to be appointed as a Substitute Notary. The deed made by the Substitute Notary who does not fulfill the procedures according to the Notary Law will become a deed underhand and does not have perfect

¹⁰ Habib Adjie, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2008).p. 38

¹¹ Bayu Indra Permana, Dominikus Rato, and Dyah Ochtorina Susanti, “Kedudukan Pembagian Hak Bersama Waris Sebagai Peralihan Harta Yang Dibebaskan Pajak Penghasilan,” *MIMBAR YUSTITIA : Jurnal Hukum Dan Hak Asasi Manusia* 7, no. 1 (2023): 44–62.

¹² Habib Adjie and Rusdianto Sesung, *Tafsir, Penjelasan, Dan Komentar Atas Undang-Undang Jabatan Notaris* (Bandung: Refika Aditama, 2020). p. 14.

¹³ Adjie, *Sanksi Perdata Dan Administrasi Terhadap Notaris Sebagai Pejabat Publik*. p. 56.

¹⁴ *Ibid*, p. 57.

¹⁵ Bhim Prakoso et al., “Arrangement of Agrarian Reform as A Basis For Providing Legal Certainty For the Community,” *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 1–16.

evidentiary power.¹⁶ Notaries and substitute notaries must fulfill all the procedures for their appointment, because if they do not fulfill them all procedures then the general requirements to become a public official become flawed, so that the deed made becomes an inauthentic deed, for violating Article 1868 of the Civil Code.¹⁷

Substitute Notary Deed Based on Article 1868 of the Civil Code, its status can change to a private deed as stipulated in Article 1869 of the Civil Code. If a Substitute Notary violates the provisions contained in the regulation, then the original Notary deed is an authentic deed that has the power perfect proof can turn into a private deed.¹⁸ The validity of a Substitute Notary's deed whose appointment does not meet the requirements of the appointment procedure, then the Substitute Notary's deed is invalid, this is because the appointed Substitute Notary has violated the provisions and does not meet the requirements that must be met in the UUJN. To determine the legal status or validity of a deed, it must go through a court.

Habib Adjie explains in the book Cancellation and Revocation of Notarial Deeds, Notarial Deeds are void or null and void by law or have the power of proof as private deeds occur because the conditions that have been determined according to law are not met, without the need for certain legal actions from the parties concerned.¹⁹ Therefore, cancellation is passive, meaning that without any active action or effort by the parties involved in an agreement, it will be void or null and void by law because there are conditions that are not met.²⁰ Likewise in Article 33 paragraph (1) of the Republic of Indonesia Law Number 2 of 2014 concerning Amendments to the Law Number 30 of 2004 Concerning the Position of Notary, if the Substitute Notary whose appointment does not meet the requirements for appointment, the deed made by the Substitute Notary remains valid, but the deed is degraded to a private deed. And does not meet the requirements stipulated in Article 1868 of the Civil Code, so that according to Article 1869 of the Civil Code the deed becomes a private deed.

Legal Responsibility and Authority of a Substitute Notary Who Does Not Fulfil the Requirements for His Appointment for the Deed He Made

The law imposes a burden of responsibility for actions that have been committed.²¹ Based on Article 65, Notaries, Substitute Notaries and Temporary

¹⁶ Nadia Pitra Kinasih and Azizahtul Himma, "Akibat Hukum Notaris Menggunakan Website Pribadi Dalam Memberikan Pelayanan Jasa Kepada Masyarakat," *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 38–63, <https://doi.org/10.71087/AJLR.V1I1.4>.

¹⁷ Meralda Amala Istighfarin, "Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain," *Acten Journal Law Review* 1, no. 1 (August 31, 2024): 64–84.

¹⁸ Huduri, "Keabsahan Akta Otentik Yang Dibuat Oleh Notaris Pengganti Yang Para Pihaknya Adalah Keluarga Notaris Yang Digantikan.," *Op.Cit* . p. 35.

¹⁹ Milinia Mutiara Yushinta Dewi and Bayu Indra Permana, "Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang Di Kantor Notaris," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 76–83.

²⁰ Adjie, *Sanksi Perdata Dan Administrasi Terhadap Notaris Sebagai Pejabat Publik*. p. 67.

²¹ Sudikno Mertokusumo, *Mengenal Hukum Suatu Pengantar* (Yogyakarta: Liberty, 2005). p. 192.

Notary Officials are responsible for every deed. which he made even though the Notary Protocol had been submitted or transferred to the party keeping the Notary Protocol. Regarding the Substitute Notary, in this study, the Substitute Notary was appointed who did not meet the appointment requirements stipulated in the Notary Law, where the Substitute Notary had not met the requirements, namely, he had not worked for 2 (two) consecutive years at a notary's office. This is contrary to the Requirements for Appointment as a Substitute Notary as regulated in Article 33 paragraph (1) which states "the requirements for being appointed as a Substitute Notary and Temporary Notary are Indonesian citizens who have a diploma Bachelor of Law and has worked as an employee at a notary's office for at least 2 (two) consecutive years."²²

Notaries in carrying out their duties and positions have the right to take leave as regulated in Article 25 paragraph (1) of the UUJN. This article explains that a Notary who will take leave must appoint a Substitute Notary who will replace him during the leave.²³ The existence of a substitute Notary aims to meet the needs of the community in making deeds temporarily so that public services to make authentic deeds are not disrupted and continue to run as they should when the Notary is unable to carry out his duties and position.²⁴ The Law on the Position of Notary Gives a Substitute Notary the same authority and obligations as the Notary's authority and obligations to write down all acts of agreement and stipulations desired by the parties appearing before him to request from Notaries must provide their information in an authentic deed so that it has perfect evidentiary power.²⁵

The deed made by the Substitute Notary will be used as evidence, so the deed must have elements of perfection, both in terms of material and formal. Thus, the Substitute Notary must be responsible for the deed he has made.²⁶ Based on Article 1868 and Article 1869 of the Civil Code, only officials who meet the requirements for appointment as public officials are given the authority to make authentic deeds.²⁷ Substitute Notaries who do not meet the requirements for appointment are not authorized to make authentic deeds and other authorities as regulated in Article 15 of

²² Piters Djajakustio, "Surat Kuasa Membebaskan Hak Tanggungan (SKMHT) Batal Demi Hukum: Urgensi Dan Alternatif Membangun Konsep Baru Perlindungan Hukum Bagi Kreditor," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 25–44.

²³ Misbah Imam Soleh Hadi and Bayu Indra Permana, "Kontruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris," *Jurnal Ilmu Kenotariatan* 3, no. 1 (2022): 1–13.

²⁴ Melania Indiana Putri Firmansyah, "Perlindungan Hukum Bagi Penghadap Penyandang Disabilitas Dalam Pembuatan Akta Notaris," *Acten Journal Law Review* 1, no. 3 (December 31, 2024): 203–18.

²⁵ Ister Angelia, "Kedudukan Hukum Notaris Merangkap Jabatan Sebagai Arbiter Ditinjau Dari Undang-Undang Jabatan Notaris," *Jurnal Ilmu Kenotariatan* 5, no. 2 (2024): 164–76.

²⁶ Lanny Kusumawati, *Teknik Pembuatan Akta Seri A (Hukum Pribadi Dan Keluarga)* (Surabaya: Ubaya Press, 2023). p.45.

²⁷ Vikriatuz Zahro, Iswi Hariyani, and Iwan Rachmad Soetijono, "Juridical Implications of the Issuance of Covernotes by A Notary as Basis of Disbursing Credit of Banking," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 102–18.

the UUJN. In addition to the lack of authority, Substitute Notaries who do not meet the requirements for appointment and have made a deed, then the Notary The substitute must be responsible for the deed that has been made.²⁸ Related to the authority of a person in carrying out his position, then the authority is always followed by accountability after carrying out his position. If the obligation is not carried out, sanctions can be imposed.²⁹ The legal subject subject to the sanctions said to be responsible or legally liable for the violation.³⁰

The responsibility of a notary is regulated in Article 65 of the UUJN, which states that notaries, substitute notaries and temporary notary officials are responsible for every deed. which he made even though the Notary protocol has been submitted or transferred to the Notary protocol storage party. Administrative responsibility will arise when a Notary does not carry out his obligations properly according to laws and regulations. Administrative responsibility for the Notary will be given to the Notary if the Notary does not carry out his duties, obligations and authorities as a Notary. Other civil responsibilities that can be imposed on a Notary.³¹ In the form of sanctions imposed for errors that occur due to default, or unlawful acts. This responsibility is in the form of sanctions for reimbursement of costs, compensation and interest. This is the consequence that a Notary will receive if the deed that the person concerned only has the power of proof as a private deed and the deed is void by law.

Notary who does not meet the requirements for appointment according to UUJN and has made a deed must be responsible for the deed he has made. A Substitute Notary can be given civil sanctions in the form of compensation, if the parties demand losses. The form of Notary's responsibility is not only administrative and civil responsibility, but Notary can also be subject to Criminal responsibility if the Notary's mistake has reached or contains criminal elements. Substitute Notary can be given legal responsibility in the form of administrative sanctions and civil sanctions, and the deed made by Substitute Notary is null and void by law and becomes a private deed.³² As a result of such a deed, the Substitute Notary is civilly responsible for the deed he made if any party demands compensation. This is because the Substitute Notary is not authorized to exercise the authority to make a deed, as regulated in Article 15 of the UUJN.

²⁸ Misbah Imam Subari and Justicia Firdaus Kurniawan, "Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 144–60.

²⁹ Dinda Suryo Febyanti, Fanny Tanuwijaya, and Echwan Iriyanto, "The Legal Consequences of Heirs Not Submitting the Notary Protocol To The Regional Supervisory Board," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 119–29.

³⁰ Hans Kelsen, *Teori Hukum Murni* (Bandung: Nusamedia, 2008). p. 136.

³¹ Rifandika Naufal Afif, Andi Muh Ihsan, and Dita Elvia Kusuma Putri, "Akibat Hukum Bagi Notaris Terhadap Penyalahgunaan Keadaan Dalam Pembuatan Akta Autentik," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 45–61.

³² Juristie Widyadhana, Putri Kemalasari, and Shania Anindya Fitriani, "Urgensi Pembuatan Akta Kesaksian Dan Akta Pernyataan Ahli Waris Oleh Notaris," *Jurnal Ilmu Kenotariatan* 5, no. 1 (2024): 62–75.

When the Substitute Notary is wrong or negligent in carrying out his/her duties in violation of existing laws and regulations, then the Substitute Notary should be independently responsible for his/her errors or negligence.³³ Based on the explanation above, the Substitute Notary cannot be fully blamed, because the Substitute Notary is the appointed Substitute Notary. The Substitute Notary has no authority to make deeds, and the Substitute Notary is independently responsible for the deed he or she makes, where the Substitute Notary can be sued in civil law for damages, if the parties claim damages.

VI. CONCLUSION

The validity of a deed made by or before a Substitute Notary whose appointment does not meet the requirements for appointment, the deed made by the Substitute Notary remains valid, but the deed is degraded to a private deed, because the Substitute Notary does not have the authority as in Article 15 and the Substitute Notary does not meet the requirements for appointment in Article 33 paragraph (1) of the Notary Law. And does not meet the requirements stipulated in Article 1868 of the Civil Code, so that according to Article 1869 of the Civil Code the deed becomes a private deed. Based on the explanation above, the Substitute Notary cannot be completely blamed, because the Substitute Notary is the appointed Substitute Notary.

The Substitute Notary is not authorized to make deeds, and the Substitute Notary is independently responsible for the deeds he makes, where the Substitute Notary can be sued in civil court for damages, if the parties demand damages. Based on the explanation above, the Substitute Notary cannot be blamed entirely, because the Substitute Notary is the appointed Substitute Notary. The Substitute Notary is not authorized to make a deed, and the Substitute Notary is independently responsible for the deed he made, where the Substitute Notary can be sued in civil court for damages, if the parties demand damages.

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³³ Sita Farahianie, “Kedudukan Hukum Akta Autentik Yang Dibuak Oleh Notaris Dalam Perspektif Cyber Notary,” *Acten Journal Law Review* 1, no. 2 (October 30, 2024): 171–86.

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